

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**CARROLL INDEPENDENT SCHOOL  
DISTRICT,**

*Plaintiff,*

v.

**UNITED STATES DEPARTMENT OF  
EDUCATION; ET AL.,**

*Defendants.*

**Case No. 4:24-cv-00461-O**

**PLAINTIFF CARROLL INDEPENDENT SCHOOL DISTRICT'S  
RESPONSE TO DEFENDANTS' FIRST NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Defendants' Notice of Supplemental Authority (ECF No. 53) doesn't help them for two reasons and in fact supports this Court granting a § 705 stay.

First, this Court has already correctly determined that Defendants' "novel standard for unlawful sex-based harassment," "a recipient's liability for sex discrimination" on the basis of gender identity and the related de minimis harm provision (including 34 C.F.R. §§ 106.10, 106.31(a)(2)), the self-initiated grievance process, and the gag-order requirement are likely unlawful. ECF No. 43 at 14; *see also Texas v. Cardona*, --- F. Supp. 3d ----, 2024 WL 2947022, at \*29 (N.D. Tex. June 11, 2024). Defendants do not ask this Court to reconsider that holding.

Second, the *Alabama* court placed the burden to show severability on the plaintiffs, ECF No. 53-1 at 30, but the Fifth Circuit requires Defendants to show severability, *see Louisiana v. U.S. Dep't of Educ.*, no. 24-30399, 2024 WL 3452887, at \*2 (5th Cir. July 17, 2024). In *Louisiana*, the Fifth Circuit denied the government's motion to stay an injunction against the Rule because its severability argument put the court "in an untenable position." *Id.* The government had not

provided the district court “briefing or argument” on how to sever the Rule, which would force the court “to parse the 423-page Rule” itself. *Id.*; *accord id.* (severability analysis requires the court to determine “whether the regulation would have been enacted in the absence of the challenged provisions”). Carroll ISD challenged Defendants’ “gender-identity mandate,” ECF No. 15 at 3, which the Fifth Circuit recognized is the Rule’s “heart,” *Louisiana*, 2024 WL 3452887, at \*1. At this late stage—with only one day before the Rule becomes effective—preserving the status quo requires staying the Rule as a whole to avoid “making predictions ... about the interrelated effects of the remainder of the Rule” and to avoid imposing “double” the “implementation and compliance costs.” ECF No. 49 at 17–18 (quoting *Louisiana*, 2024 WL 3452887, at \*2).

The *Alabama* decision means that the Rule currently will go into effect in Florida and Georgia tomorrow. *See* ECF No. 53-1 at 6. In the upcoming school year, Carroll ISD students will travel to both states for debate tournaments and use restrooms in those states. MPI App.476 (ECF No. 37). Without a stay of the Rule, those students will run the risk of encountering persons of the opposite sex in those private spaces. ECF No. 49 at 13–14. And so will other Carroll ISD students traveling to states like Oregon and California. MPI App.476. To avoid that irreparable injury, this Court should stay the Rule in its entirety. *See Fed’n of Ams. for Consumer Choice, Inc. v. U.S. Dep’t of Lab.*, No. 6:24-CV-163-JDK, 2024 WL 3554879, at \*17 (E.D. Tex. July 25, 2024) (declining to limit § 705 stay to the parties because the agency action was “likely unlawful as to Plaintiffs” and thus “likely unlawful as to all other similarly situated” persons and because the agency promulgated the rule to “establish a uniform definition for all persons giving investment advice”).

Respectfully submitted this 31st day of July 2024.

**Tim Davis**

Texas Bar No. 24086142

**Allison Allman**

Texas Bar No. 24094023

**Trevor Paul**

Texas Bar No. 24133388

**JACKSON WALKER LLP**

777 Main Street, Suite 2100

Fort Worth, Texas 76102

Telephone: (817) 334-7200

tdavis@jw.com

aallman@jw.com

tpaul@jw.com

**Jonathan A. Scruggs\***

Arizona Bar No. 030505

**ALLIANCE DEFENDING FREEDOM**

15100 N. 90th Street

Scottsdale, Arizona 85260

Telephone: (480) 444-0020

Facsimile: (480) 444-0028

jscruggs@ADFlegal.org

/s/ Mathew W. Hoffmann

**Tyson C. Langhofer\***

Virginia Bar No. 95204

**Mathew W. Hoffmann\***

Virginia Bar No. 100102

**ALLIANCE DEFENDING FREEDOM**

44180 Riverside Pkwy

Lansdowne, Virginia 20176

Telephone: (571) 707-4655

Facsimile: (571) 707-4656

tlanghofer@ADFlegal.org

mhoffmann@ADFlegal.org

**Natalie D. Thompson\*\***

Texas Bar No. 24088529

**ALLIANCE DEFENDING FREEDOM**

440 First Street NW, Suite 600

Washington, DC 20001

Telephone: (202) 393-8690

Facsimile: (202) 347-3622

nthompson@ADFlegal.org

**Counsel for Plaintiff Carroll ISD**

*\*Admitted pro hac vice*

*\*\*Practice supervised by one or more D.C. Bar members while D.C. Bar application is pending.*

**CERTIFICATE OF SERVICE**

I certify that on July 31, 2024, this document was served on all counsel of record via the Court's CM/ECF system.

/s/ Mathew W. Hoffmann

Mathew W. Hoffmann

**Counsel for Plaintiff Carroll ISD**